THE HON'BLE SRI JUSTICE K.C. BHANU

On Thursday, the twenty second day of September

Two thousand and five.

W.P. NO.10822 of 2004

K. Pydi Reddy

…….Petitioner.

And

A.P. Transco, represented by its Chairman & Managing Director, Vidyut Soudha, Hyderabad and others.

……Respondents.

O R D E R:

This writ petition is filed by the petitioner for declaring the impugned proceedings of the 3rd respondent No.CGM (HRD&Trg)/DS(P)/PO(Adm-I)/92/2004, dated 14.6.2004, as illegal and arbitrary.

2) The case of the petitioner in brief are as follows: The petitioner is working as Divisional Engineer, Electrical, DPE, APEPDCL, Vizianagaram with I.D.No.1021475 and he was earlier recruited into the erstwhile A.P.State Electricity Board (APSEB) on 19.11.1969 and that he was promoted to the present post of Divisional Engineer in December, 1999. As per the provisions of the Electricity Reforms Act, the APSEB bifurcated into six different entities. In view of the said process, the petitioner had submitted option with a liberty to

revise his option and on which the respondents-board retained the petitioner in APEPDCL. He further submits that the erstwhile APSEB was prepared a seniority list which is known as combined seniority list at the cadre of Assistant Divisional Engineers and the respondents, ignoring seniority in APEPDCL and promoted the juniors of the petitioner to their next cadre. The petitioner approached this Court by way of filing W.P.No.1563 of 2004 and in view of the interim orders therein in WPMP.No.2063 of 2002, to consider the petitioner's case, the 3rd respondent passed the impugned order literally denying the promotion. Hence the petitioner filed this writ petition, challenging the impugned order.

3) Inter alia, the respondents filed counter affidavit denying the allegations and contending that the impugned proceedings issued, stating that the petitioner's candidature has been considered and he was allotted to A.P. Transco, on final absorption and no junior of the petitioner has been promoted as Superintending Engineer and his promotion and he was posted as Superintending Engineer vide proceedings dated 25.8.2004 and he has not relieved himself from the present post and joined the duty and therefore, the prayer in the petition is misconceived and the same cannot be granted and prays to dismiss the writ petition.

4) The learned counsel for the petitioner contended that when ignoring the promotion of the petitioner, some of the juniors were promoted, then the writ petitioner filed W.P.No.1563 of 2004 where under interim orders were passed directing the respondent to consider his case for promotion. He is continuing in the APEPDCL in pursuance of the orders in W.P.No.17154 of 2002 and therefore, the impugned proceedings are liable to be set aside.

5) On the other hand, the learned counsel appearing for the respondents contended that the impugned proceedings were issued that he was allotted to A.P. Transco, on final absorption and no junior of the petitioner has been promoted as Superintending Engineer and his promotion has been considered and posted as Superintending Engineer vide proceedings dated 25.8.2004 and he has not relieved himself from the present post and joined the duty and

therefore, the prayer in the petition cannot be granted.

6) The promotions in the context of law relating to certain amounts of advancing or raising and employed to higher office or rank or post than the one employee has been holding of a higher scale of pay than the one employee was enjoying immediately before such promotion. Although, an employee has no right to be promoted, he has right to be considered for promotion. This right to be considered for promotion is one of the matters relating to employee for appointment.

7) The then Andhra Pradesh State Electricity Board cease to exist consequent to formation of A.P.TRANSCO and A.P.GENCO in the year 1999. As per G.O.No.35 dated 31.3.2000, A.P.TRANSCO was divided into four distribution companies. In terms of the option process and the allotment of the personal working in various companies, the petitioner became the employee of A.P.TRANSCO with effect from 17.8.2002. The transfer companies being corporate bodies have their own personnel and separate seniority list to effect promotions to its employees. The claim of the petitioner is based on combined senior list of APSEB, which is not in existence after 17.8.2002. The impugned proceedings passed in pursuance of the directions issued by this Court in W.P.M.P.No.2063 of 2004 in W.P.No.1563 of 2004 wherein it is clearly stated that the petitioner has been issued with letter dated 13.1.2004 communicating his final absorption in the A.P.TRANSCO as per his first choice and specifically informing him that he shall cease to be the employee of the erstwhile APSEB and shall be the employee of A.P.TRANSCO only. Therefore, from the date of final absorption the combined seniority list is ceased to be exist. The W.P.No.17154 of 2002 which is pending before this Court is with regard to option process exercised by the employees, therein interim direction issued directing the respondents to retain APEPDCL, where he was working. By virtue of the interim orders, the petitioner is working presently in APEPDCL. Therefore, in pursuance of the distribution of four companies the companies have their own separate seniority list to effect promotions. Therefore, the combined seniority list of APSEB will be seized to with effect from 17.8.2002. It is specifically stated that the status of petitioner in APEPDCL is only on

deputation, he cannot claim any seniority or rights in APEPDCL by virtue of his continuation in APEPDCL for the purpose of claiming seniority does not arise. As per the first choice, the respondents issued proceedings dated 13.8.2002 absorbing him in A.P.TRANSCO. Mere continuation in the APEPDCL does not confer any right on him to seek promotion unless he is absorbed in the APEPDCL.

8) A settlement was arrived at between the registered associations a tripartite agreement between the Government of Andhra Pradesh and APSEB Engineers Association and APSEB Assistant Engineers Association was entered into on 9.9.1997. One of the clauses of the agreement is that the terms and conditions of service upon transfer to the Corporate entitles, such as promotions, transfers, leave and allowances etc., regulated by existing regulations of service rules in vogue will be guaranteed to continue to be the same and any modifications shall be by mutual negotiations and settlement without detriment to the existing benefits. It is also another clause in the agreement that all the benefits of the services rendered by the employees in the Board as on the date of restructuring i.e. the effective date, shall be protected and shall be given full effect. It is also agreed that the period of the service of the employees under the Board and under the corporate entity shall be treated as continuous service for the purposes of all service benefits and terminal benefits payable to the personnel. When A.P.TRANSCO was divided into four distribution companies, the question of following the combined seniority list does not arise. In view of the fact that options have been exercised by the employees to be absorbed in different distribution companies, depending upon the options given by the employees they will be absorbed in a particular distribution company. So, from that date onwards the employee who had given option to a particular distribution company, his seniority has to be maintained in the said company only. It is a case whether the petitioner was absorbed into A.P.TRANSCO and he can have a right to consider his promotion in the A.P.TRANSCO on the basis of seniority in the A.P.TRANSCO only. Since he is on deputation to APEPDCL, he cannot have any right for promotion in APEPDCL.

9) The respondents considered the case of the petitioner for promotion and

posted as Superintending Engineer (Electrical-Information Systems) A.P.TRANSCO vide proceedings T.O.O.RT.No.130 dated 25.8.2004, but the petitioner has not relieved himself from the post and joined the duty as Superintending Engineer. Since, the petitioner was absorbed in A.P.TRANSCO, on the basis of his first option, he can claim only to consider his promotion in the A.P.TRANSCO only and as a matter of fact that promotion was given.

10) Therefore, the writ petition is totally devoid of merits and is dismissed. No costs.

Justice K.C.BHANU.

_____ September 2005.

BCS